

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

K.T.,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

June 30, 2023

Court of Appeals Case No.
23A-JV-589

Appeal from the Warren Circuit
Court

The Honorable Hunter J. Reece,
Judge

Trial Court Cause Nos.
86C01-2301-JD-1
86C01-2210-JD-28
86C01-2209-JD-25

Memorandum Decision by Judge Brown
Judge Crone and Senior Judge Robb concur.

Brown, Judge.

[1] K.T. appeals the juvenile court's order committing him to the Indiana Department of Correction ("DOC"). We affirm.

Facts and Procedural History

[2] On September 9, 2022, the State filed a Request for Authorization to File Delinquency Petition under cause number 86C01-2209-JD-25 ("Cause No. 25") alleging that K.T., who was born in December 2006, committed the delinquent act of auto theft by exerting unauthorized control over a truck belonging to Roy Thomas. On October 27, 2022, the State filed a Request for Authorization to File Delinquency Petition under cause number 86C01-2210-JD-28 ("Cause No. 28") alleging that K.T. committed the delinquent act of auto theft by exerting unauthorized control of a car belonging to Ricky V. Robbins.

[3] On November 9, 2022, the court entered a Dispositional Order under Cause Nos. 25 and 28 finding that K.T. admitted to the allegations in the delinquency petitions, adjudicated him to be a delinquent, ordered that he be supervised by the juvenile probation department, and ordered K.T.'s parents to ensure he complied with the rules of supervision.

[4] On November 30, 2022, the State filed a Petition to Modify Dispositional Order under Cause Nos. 25 and 28 alleging that K.T. had violated the terms and conditions of his supervision by being suspended from school as a result of inappropriate student behavior occurring on November 11, 2022, and on November 18, 2022, he became angry at home after his cell phone was taken away, destroyed furniture, cut himself, and threatened to commit suicide.

- [5] On January 4, 2023, the State filed a Request for Authorization to File Petition Alleging Delinquency under cause number 86C01-2301-JD-1 (“Cause No. 1”) alleging K.T. committed acts which would constitute strangulation as a level 6 felony and domestic battery as a class A misdemeanor if committed by an adult. That same day, the State also filed a Motion to Modify Disposition under Cause Nos. 25 and 28.
- [6] On January 7, 2023, the court entered an Order on Modification of Disposition under Cause No. 25 which detained K.T. at the Vigo County Juvenile Detention Facility. On January 9, 2023, the court entered an Order on Initial Hearing and Order on Motion to Modify Sentence under Cause Nos. 25, 28, and 1, which scheduled a fact-finding hearing and ordered that K.T. continue to be detained in the Vigo County Juvenile Detention Facility. The court found that “[s]aid placement is the least restrictive placement in the child’s best interest,” “[r]easonable efforts to prevent placement could not be made, because of the danger to public safety,” and “[r]emaining in the [home] would be contrary to the health, safety, and welfare of the child, [because] of the danger he poses based upon the allegations to himself and others.” Appellant’s Appendix Volume II at 65.
- [7] On February 2, 2023, the court held a hearing in Cause Nos. 25, 28, and 1. K.T. admitted that he was suspended from school as a result of inappropriate behavior on November 11, 2022, and also admitted that on November 18, 2022, he became angry after his cell phone was taken away and destroyed furniture in his parents’ home. He also indicated he “got into a fight” with his

brother on December 30, 2022, and put pressure on his neck. Transcript Volume II at 9. The court found that K.T. committed a delinquent act that would constitute strangulation as a level 6 felony and domestic battery as a class A misdemeanor if committed by an adult under Cause No. 1 and violated the terms and conditions of his supervision in Cause Nos. 25 and 28. The State then presented testimony from Warren County Probation Officer Robin Hegg and K.T.'s father. K.T. presented the testimony of T.B. who stated her grandson, who lives with her, knows K.T., that her granddaughter, who does not live with her, previously dated K.T., and she was willing to take K.T. into her household. The court stated:

I do agree that the least restrictive placement is with [T.B. and her husband], but that is not where the analysis stops. [T]he Court has concerns with the placement with [T.B. and her husband]. You know they have had one (1) contact with him while he has been down there. I am concerned about there being another child in the home and his history of violence. There is a fourteen year (14) [old] boy in that home, their grandchild. Their initial reaction is probably the right one which is the first time that there is an issue they are going to send him right back. [B]ut I am concerned for that child's safety just as I am concerned for the safety of the children in the current home. I think if we had maybe a more structured location I might be more persuaded, but um, I look at his age, I look at the facts of the allegation, I look at the acceleration and the complete disregard for the services that were offered and the escalation and the behavior. I do find that the appropriate placement is with the [DOC].

Id. at 35.

[8] On February 2, 2023, the court entered an Order Adjudicating Delinquent Child, Granting Modification of Dispositional Decree and Committing to DOC under Cause Nos. 25, 28, and 1, which found that the acts admitted by K.T. under Cause No. 1 would constitute strangulation as a level 6 felony if committed by an adult, adjudicated him a delinquent, and found that he violated the rules of juvenile supervision. It found it was in K.T.'s best interests to be removed from the home environment and that remaining in the home "would be contrary to the welfare of the child because of the allegations admitted and of an inability to provide shelter, care, and/or supervision at the present time." Appellant's Appendix Volume II at 67. It found that reasonable efforts to prevent or eliminate removal "were not required due to the emergency nature of the situation, as follows: the child was a danger to his siblings, and less restrictive placements have proven ineffective." *Id.* It found the probation department made reasonable efforts to prevent or eliminate the need for K.T.'s removal including: "informal probation; placement in the home with supervised juvenile probation; placement in the home with electronic monitored home detention, individual and family counselling; short term placement in secure detention; and relative placement." *Id.* It referenced the prior adjudications in Cause Nos. 25 and 28, noted that "one of those prior adjudications was previously modified . . . as a result of the juvenile's non-compliance commitment of the second delinquent act," and found that K.T. was on supervision in both matters at the time the new delinquent act occurred. *Id.* It stated:

The Court has considered the behavior reports from the school and the testimony of the juvenile's Father concerning his violent outbursts at home. Although the juvenile has had a pattern of minor disciplinary issues at home and school, it has become increasingly more serious and volatile as he has grown older. The parents cannot control him and are [frightened] for the safety of their other minor children in the home. The Court has attempted less restrictive placements, but that has resulted in continued and progressively more violent outbursts and criminally delinquent acts. The juvenile does not appear dissuaded by the coercive intervention of the Court and the need for more intensive and secure treatment to rehabilitate him is necessary.

Id. The court awarded wardship of K.T. to the DOC for housing in any correctional facility for children for an indefinite term and recommended that the DOC assess K.T. for mental health needs and anger management.

Discussion

- [9] K.T. asserts that placement in the DOC is not in his best interests and that, “[w]hile [he] has had some previous criminal history, this has all occurred within a six month period.” Appellant’s Brief at 10. He argues that the State has failed him and has decided to “simply turn him over to the [DOC] without a fair attempt at rehabilitation or behavior alteration.” *Id.* He also contends that a commitment to the DOC is not the least restrictive alternative.
- [10] The juvenile court is given wide latitude and great flexibility in determining the disposition of a delinquent child. *D.A. v. State*, 967 N.E.2d 59, 65 (Ind. Ct. App. 2012). However, its discretion is circumscribed by Ind. Code § 31-37-18-

6, which provides that, “[i]f consistent with the safety of the community and the best interest of the child,” the juvenile court shall enter a dispositional decree that is “in the least restrictive (most family like) and most appropriate setting available” and “close to the parents’ home, consistent with the best interest and special needs of the child”; least interferes with family autonomy; is least disruptive of family life; imposes the least restraint on the freedom of the child and the child’s parent, guardian, or custodian; and provides a reasonable opportunity for participation by the child’s parent, guardian, or custodian. Under the statute, placement in the least restrictive and most appropriate setting available applies only “[i]f consistent with the safety of the community and the best interest of the child.” *J.D. v. State*, 859 N.E.2d 341, 346 (Ind. 2007) (citing Ind. Code § 31-37-18-6). We review the juvenile court’s disposition for an abuse of discretion. *R.H. v. State*, 937 N.E.2d 386, 388 (Ind. Ct. App. 2010).

[11] The record reveals that Officer Hegg testified that K.T. indicated he would like to live with T.B. and her husband who are “the maternal grandparents and/or custodians of friends of” K.T. Transcript Volume II at 13. She testified that she did not believe that was a good option and stated: “I know that [K.T.] and [his girlfriend] were at [T.B.’s] home and they had intercourse um, I’m not completely sure how good the supervision will be . . . and he said to me when he wanted to go there that he would be able to do things he wanted to do.” *Id.* When asked if K.T. could obtain out-patient services in the community, she answered: “He has been in out-patient services through Valley Oaks and at this point it, I wouldn’t say it hasn’t been working but it hasn’t been positive either.

So, any additional services at this time I do not know what they would be in the community.” *Id.* at 14. When asked if she believed there would be adequate services available in the community or if she believed K.T. needed the intensity of services offered in a structured residential placement like the DOC, she answered: “He needs the intensive services such as DOC.” *Id.* The court asked what level of supervision K.T. was under when the most serious offenses took place, and she answered that she was seeing him “bi-weekly at least, maybe weekly,” he was on house arrest, “they were making home visits,” and she was “contacting making sure he was going to treatment [and] that the parents were trying to get actively involved in family therapy.” *Id.* at 15-16. When asked by the court if returning home was a viable option, she answered:

I don’t feel it is a very viable option because the trauma the kids have gone through, his siblings. They are addressing that at this time, the family is. As far as they are seeking out treatment for them. Um, I know the parents, I haven’t spoke directly to the siblings, but the parents expressed that the kids are scared. I don’t feel that would be a good option for him to go back in there.

Id. at 16. The court asked: “Are you aware, based on your thirty (30) years of experience of any such facility that might be a lesser restrictive placement that the Court could consider?” *Id.* Officer Hegg answered: “I considered that, um, I at this time, I don’t know a facility with the outbursts that he has that would be equipped without possible staffing with DCS, but I don’t know of one off, right now.” *Id.* When asked if K.T. had any kind of de-escalation plan at the time of the alleged violations, she answered affirmatively and explained that

“the plan was for him to go to his grandparents that live just down the lane from him” but “the grandparents . . . do not want to have him in the home.” *Id.* at 17.

[12] K.T.’s father testified that he did not believe it would be best for K.T. to return to the family home. He testified that K.T. spent three months with his maternal grandparents but that “had not worked” and K.T. “returned to our home.” *Id.* at 21. He indicated placement with the grandparents of K.T.’s friends was not a good option for K.T. On cross-examination, when asked if “this all just happened within a short period of time,” he answered affirmatively. *Id.* at 23. K.T.’s counsel asked: “[I]s there anyplace else that he can stay that is less restrictive than the [DOC]? At this point in time, and I know we have talked, there is not family, no where else you can think of?” *Id.* K.T.’s father stated: “No. Like I said we have already tried it with family and it didn’t work. So, I, most of the family members are like, they know everything that has gone on, so they feel like that if he goes there nothing is going to change.” *Id.* Upon questioning by the court, he stated that when K.T. tried to commit suicide he broke a table with a hammer and put holes in the walls. He further testified that K.T. broke the stovetop and would throw himself on the ground, kick, scream, cry, put holes in the walls, stomp his feet on the floor, and kick the cabinets and door. He also testified that K.T. made verbal threats to his younger siblings. On recross-examination, K.T.’s father indicated that K.T. began stealing things in second grade, he took a pocketknife to school in the third or fourth grade, he refused to complete his work in the sixth grade, and he took a hatchet to school

in the seventh grade because a peer made him mad. He also testified that he took K.T. to specialists in Indianapolis and reached out to the Department of Child Services.

[13] Based upon the record including the finding that K.T. committed an act against his sibling that would constitute strangulation as a level 6 felony if committed by an adult and his other rapidly escalating criminally delinquent behavior we conclude that the court's ordered placement is consistent with K.T.'s best interests and the safety of the community. We find no abuse of discretion.

[14] For the foregoing reasons, we affirm the juvenile court.

[15] Affirmed.

Crone, J., and Robb, Sr.J., concur.